IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shri Ikling. Versus State of Rajasthan & ors.

S.B. Criminal Misc. Petition No. 166/2004 against the order dated 24-11-2003 passed by the Sessions Judge, Rajsamand, in Criminal Revision No. 8/2003.

...

Date of Order: September 13, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. T.S. Champawat, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Pankaj Bohra for Mr. Ravi Bhansali, for the non-petitioners No. 2 to 6.

BY THE COURT:

The petitioner has filed the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) challenging the order dated 24-11-2003 passed by the Sessions Judge, Rajsamand (for short, "the Revisional Court" hereinafter in Criminal Revision No. 8/2003, dismissing the revision petition against the order dated 12-7-2000 passed by the Sub-Divisional Mgistrate, Rajsamand (for short, "the Executive Magistrate" hereinafter) and affirming the order of the Executive Magistrate.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the Executive

Magistrate as well as the Revisional Court.

It appears that the proceedings under Sections 145 and 146 of the Code were initiated. The petitioner is party No.1 and the non-petitioners No.2 to 6 are the party No.2 before the Executive Magistrate. The Executive Magistrate, by an ex parte order, attached the land in dispute and appointed a Receiver. Party No.2 moved before the Executive Magistrate for withdrawal of the attachment. On being moved before the Executive Magistrate that no such dispute exists and the parties have already gone to the Civil Court and the order of the Civil Court has been passed in favour of party No.2, who are non-petitioners No.2 to 6 herein, and against which an appeal is pending and the Party No.2 has been in the peaceful possession of the subject-matter of dispute under the order of the civil court. The Executive Magistrate withdrew the order of attachment stating that the party No.2, who are non-petitioners No.2 to 6 herein, are in the peaceful possession. That order came to be challenged by the party No.1, the petitioner herein. The Revisional Court did not find any error in the order of the Executive Magistrate and in my view rightly so.

Sub-section (5) of Section 145 of the Code provides that nothing in this Section shall preclude any party so required to attend, or any other person person interested, from showing that no such dispute as aforesaid exists or has existed, and in

such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final. Proviso to sub-section (1) of Section 146 of the Code provides that such Magistrate may withdraw the attachment at anytime if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

Admittedly, the matter is pending before the civil court and the original civil court has passed the order holding non-petitioner No.2 to 6 in possession of the property in dispute and the matter is in appeal. In the circumstances, therefore, when the parties have resorted to civil court then even otherwise, a parallel criminal proceeding is uncalled for in view of the decisions of the Hon'ble Supreme Court in Ram Sumer Puri Mahant Vs. State of U.P., (1985) 1 SCC 427, Amresh Tiwari Vs. Lalta Prasad Dubey & Anr., 2000 SCC (Cri.) 806; and a Three Judge decision of the Hon'ble Supreme Court in Mahar Jahan & ors. Vs. State of Delhi & ors., (2006) 1 SCC (Cri.) 320.

In Ram Sumer Puri Mahant Vs. State of U.P. (supra), the Hon'ble Supreme Court held as under:-

> "When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated for initiating a parallel criminal proceeding under Section 145 of the Code. **There is no scope to doubt or dispute the position that**

> **the decree of the civil court is binding on the criminal court** in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach th civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue."

In this view of the matter, I do not find any merit in the criminal miscellaneous petition and it is accordingly dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs